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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,627	07/02/2003	Trevor Nottage	F-8301	4061

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EXAMINER

MIGGINS, MICHAEL C

ART UNIT PAPER NUMBER

1772

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,627

Applicant(s)

NOTTAGE ET AL.

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION
WITHDRAWN REJECTIONS

1. The objection to the specification set forth in the non-final rejection of 11/26/04, page 2, paragraph 3 is withdrawn. All of the 35 USC 112 2nd paragraph, 35 USC 102 (b and e), 35 USC 103(a) rejections set forth in the non-final rejection of 11/26/04, pages 2-6, paragraphs 4-15 have been withdrawn.

REJECTIONS REPEATED

2. There are no rejections repeated.

Response to Arguments

3. Applicant's arguments with respect to claims 1-2, 4-5 and 7-22 have been considered but are moot in view of the new ground(s) of rejection.

NEW REJECTIONS

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett et al. (EP 1118659 A1).

Bennett disclose a beverage container comprising a container body (since a blown bottle is at least capable of use as a beverage container, column 3, paragraph [0020]), and source of luminescence associated with said container body for emitting light, said source of luminescence being a luminescent pigment that is a component of a body material from which the container body is formed (column 1, paragraphs [0008] – [0009], column 2, paragraphs [0017] – [0019], column 3, paragraph [0020]), wherein said container is formed of plastic (column 2, paragraphs [0017] – [0019], column 3, paragraph [0020]) (applies to instant claims 1 and 8).

6. Claims 1 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaufman et al. (US 6660358 B2)

Kaufman discloses a beverage container comprising a container body (abstract), and source of luminescence associated with said container body for emitting light, said source of luminescence being a luminescent pigment that is a component of a body material from which the container body is formed (column 1, line 45 through column 2, line 56), wherein said container is formed of plastic (column 1, line 45 through column 2, line 56) (applies to instant claims 1 and 8).

Claim Rejections - 35 USC § 103

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 4-5, 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Bennett et al. (EP 1118659 A1) or Kaufman et al. (US 6660358 B2) in view of Dudnick (US 4708817).

The difference between the instant claims and either Bennett or Kaufman is that neither reference discloses luminescent indicia labels applied to a container which is of plastic or paper.

Dudnick discloses decorative indicia containing fluorescent, luminescent or phosphorescent compositions (col. 2, lines 12-26). The indicia can be applied to containers to label their contents, as suggested by putting "poison" on a container (see col. 3, lines 45-57). The substrate to be used is plastic (col. 3, line 59) or paper (col. 4, line 12). The label on the container is visible in darkness (col. 3, lines 56-57) for the purpose of providing glow in the dark indicia on a label which is more aesthetically pleasing to the consumer (applies to instant claims 2, 4-5, 7 and 10).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided luminescent indicia labels applied to a container which is of plastic or paper on the container of either Bennett or Kaufman in order to provide glow in the dark indicia on a label which is more aesthetically pleasing to the consumer as taught or suggested by Dudnick.

None of the references specifically disclose that the container is made of glass. However, glass is a well known material for bottles or containers. Absent a showing of clear and convincing evidence of an unexpected results using a known material for the container or bottle is obvious and well within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to use glass in order to provide a container or bottle which is more aesthetically pleasing to the consumer and/or maintain temperature of the contents for the bottle or container (applies to instant claim 9).

9. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Bennett et al. (EP 1118659 A1) or Kaufman et al. (US 6660358 B2) in view of Alpert (US 6158612).

Bennett and Kaufman both teach the luminescent pigment as described above.

The difference between the instant claims and either Bennett or Kaufman is that neither reference discloses an indicia-bearing sleeve for a container.

Alpert discloses an indicia-bearing sleeve for a container (abstract, Fig. 1). The sleeve is made of plastic, insulating foam (col. 2, lines 20-25). The sleeve provides insulation and visible indicia for the purpose of providing insulation properties to the container (applies to instant claims 17-22).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided an indicia-bearing sleeve for the

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container of either Bennett and Kaufman in order to provide insulation properties for the container as taught or suggested by Alpert.

10. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Bennett et al. (EP 1118659 A1) or Kaufman et al. (US 6660358 B2) in view of Monkarsh et al. (US 2002/0119294 A1).

Bennett and Kaufman disclose that the luminescent material is part of the master batch as discussed above.

The difference between the instant claims and Bennett or Kaufman is the neither reference discloses a label containing indicia the labels are marked with phosphorescent ink.

Monkarsh disclose light-emitting, heat shrunk labels for containers (abstract). The containers hold beverages (par. 0002). The labels are marked with phosphorescent ink (par. 0027) in order to provide glow in the dark labels which are more aesthetically pleasing to the consumer (applies to instant claims 12-16).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention to have provided a label containing indicia the labels are marked with phosphorescent ink in the containers of either Bennett or Kaufman in order to provide glow in the dark labels which are more aesthetically pleasing to the consumer as taught or suggested by Monkarsh.

Conclusion

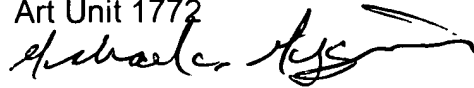
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins
Primary Examiner
Art Unit 1772



MCM
August 2, 2005